

### Comment Letter Y

**From:** CourtCoyle@aol.com [mailto:CourtCoyle@aol.com]  
**Sent:** Friday, December 23, 2011 3:51 PM  
**To:** Schneider, Matthew  
**Cc:** KMettler@viejas.com; ds\_nahc@pacbell.net; SSTRATTON@parks.ca.gov  
**Subject:** San Diego County Wind Energy Zoning Ordinance DEIR/GPA - Viejas Comments

Dear Mr. Schneider:

This comment letter on POD10-007, LOG NO. 09-00-003; SCH NO. 2010091030 Wind Energy Zoning Ordinance and General Plan Amendment is submitted on behalf of the Viejas Band of Kumeyaay Indians, a federally-recognized tribal government.

Y-1

#### 1. General Plan Amendment requires SB 18 consultation

The DEIR states that the project requires a General Plan Amendment (DEIR page S.1-1). Viejas does not recall receiving SB 18 notice for this plan amendment. Through this comment, Viejas respectfully requests that the County engage in consultation pursuant to SB 18 prior to finalization of the environmental documents. The County may contact Ms. Kimberly Mettler, Director, Viejas Office of Legal Affairs at 619.659.1710 or [kmettler@Viejas.com](mailto:kmettler@Viejas.com), to set up consultation under this, or other, authority.

Y-2

#### 2. DEIR Cultural Resources section insufficient

The DEIR acknowledges that the proposed Zoning Ordinance amendment applies to the entire unincorporated County with regard to small turbines and to a significant portion of the unincorporated County with regard to large turbines and therefore could adversely affect cultural resources throughout the County. (DEIR, page 2.5-14). The DEIR section on cultural resources, however, does not address tribal cultural values. Given the great amount of cultural resources and tribal values situated within our County related to Viejas and other tribes' occupation and use of the region for over 10,000 years, this is a serious omission. We see no analysis of Traditional Cultural Properties (TCPs), sacred viewsheds, cultural landscapes, ceremonial sites, etc. This omission must be corrected prior to finalization of the environmental document in consultation with affiliated tribes.

Y-3

#### 3. Mitigation Measures are Determined Infeasible without Sufficient Rationale

The DEIR states that the majority of the proposed mitigation measures for archaeological resources and human remains are infeasible. (DEIR pages 2.5-25 and 2.5-26). Rejected measures include: having a database of archaeological resources and monitoring permits against it and requiring archaeological and human remain surveys to ensure impacts are avoided. The DEIR then states that these measures were rejected because the project goal is to avoid issuing discretionary permits. It is Viejas' belief that an insufficient level of effort has been made by the County to allow for the waiver of discretionary permits, and understand the on the ground impacts of its proposed action. Based on the rationale provided in the DEIS, we believe that reasonable and feasible mitigation has been improperly rejected and that not all feasible mitigation has been identified.

Y-4

Y-5

## Draft Responses to Comments

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Thank you for considering these comments. Please know Viejas has additional comments it would like to provide in consultation with the County.

Y-6

Thank you,  
Courtney Coyle  
Outside Counsel, Viejas

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*"Protecting and Preserving Tribal, Cultural, Biological and Park Resource Landscapes"*

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## Response to Comment Letter Y

### Individual

**Courtney Ann Coyle on behalf of the Viejas Band of Kumeyaay Indians  
December 23, 2011**

- Y-1** Tribal consultation letters were mailed out on November 8, 2011 for a 90-day consultation period ending February 6, 2012, and the Viejas Band of Kumeyaay Indians was included in the list of addressees. Upon receipt of this comment, County staff began consultation with Viejas, which is still on-going.
- Y-2** The County agrees with this comment.
- Y-3** The County does not agree that analysis of tribal cultural values is a recognized threshold in the State CEQA Guidelines or that it is part of the County's Guidelines for Determining Significance for Cultural Resources. Analysis of Traditional Cultural Properties (TCPs) is only required in NEPA documents. As lead agency, the County is able to establish guidelines for determining significance in its jurisdiction (see County Guidelines for Cultural Resources at [http://www.sdcountry.ca.gov/dplu/docs/Cultural\\_Guidelines.pdf](http://www.sdcountry.ca.gov/dplu/docs/Cultural_Guidelines.pdf)).
- Y-4** The County agrees with this comment.
- Y-5** The County does not agree with this comment. The County's project objectives for the Wind Energy Ordinance are to allow development of small wind turbines without a discretionary permit (objective 6) and to streamline and clarify the approval process for the development and operation of small wind turbines (objective 4). Therefore, the project proposes to allow up to three free-standing or five roof-mounted small wind turbines under a ministerial process. Currently, the Zoning Ordinance allows for one small wind turbine to be permitted ministerially on a legal lot. The proposed Wind Energy Ordinance would expand this allowance.

A ministerial decision involves only the use of fixed standards or objective measurements. And once the ministerial permit is issued, there are no on-going or follow-up actions between the County and the developer. As such, many of the measures that would reduce potential impacts, such as site-specific surveys or on-going monitoring, would not be feasible. The County has added a number of restrictions to the design and siting of small wind turbines (see updated Section 6951 in the draft ordinance). However, impacts to cultural resources would still be potentially significant. The County is willing to consider any additional feasible mitigation.

## Draft Responses to Comments

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- Y-6**      This comment is conclusive in nature and does not raise a significant environmental issue for which a response is required.